



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt resolution awarding contract for concession operations at Lodi Lake Park and other locations (determined quarterly) for recreational events

**MEETING DATE:** May 19, 2004

**PREPARED BY:** Parks and Recreation Director

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**RECOMMENDED ACTION:** That the City Council adopt a resolution awarding the contract for concession operations at Lodi Lake Park and other locations (determined quarterly) for recreational events to the sole bidder Java J'z, Inc. Woodbridge, CA.

**BACKGROUND INFORMATION:** On April 21, 2004, the City Council approved specifications and authorized advertisement of bids for concession operations at Lodi Lake Park and other locations for recreational events to be determined quarterly. The proposal was to include a percentage of gross sales from concession operations, after sales tax, to be paid to the city for the privilege of furnishing concession services at Lodi Lake Park and other locations.

On May 5, 2004, staff received and opened the sole bid for concession operations from May 29, 2004, to December 31, 2005:

|                          |     |
|--------------------------|-----|
| Java J'z, Woodbridge, CA | 13% |
|--------------------------|-----|

**FUNDING:** None

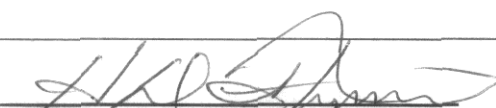
  
Tony Goehring  
Parks and Recreation Director

TG/SB:tl

cc: City Attorney  
Program Specialist

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APPROVED:

  
H. Dixon Flynn, City Manager



recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation), beginning May 29, 2004 and ending December 31, 2005.

The City of Lodi reserves the right to waive exclusive license and permit the operation of additional concession activities during the following events:

Annual Boat Races

Fourth of July Celebration/Festival

Salmon Festival

Major Special Events

All Private Facility Rentals

The City will provide:

1. Garbage receptacles. However, Concessionaire will be responsible for removing, at Concessionaire's own cost and expense, all large boxes, storage containers, and/or packaging materials which may accumulate from equipment or food storage packaging;
2. Maintenance of the general property, unless abuse and lack of general care is apparent, at which time the cost and expenditures for repairs and maintenance shall be borne by the Concessionaire.

CONCESSION OPERATION CONDITIONS:

1. The length of the contract shall be from May 29, 2004, and ending at midnight on December 31, 2005.
2. Concessionaire agrees to maintain in full force during the term hereof, a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi, its officers, agents, and employees as Additional Insureds, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all

costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal or bodily injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Concessionaire or Concessionaire's agents or employees in the implementation of this Agreement. The minimum limits of such insurance shall be \$1,000,000 general aggregate. In addition to the Additionally Named Insured Endorsement on Concessionaire's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsement shall be delivered to the Risk Manager after the issuance of said policy, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or as an endorsement, the name of the Concession that it is insuring. If there has been no such delivery within forty-eight (48) hours prior to the commencement of this Agreement, this Agreement shall be null and void. All requirements herein provided shall appear either in the body of the insurance policy or as endorsements and shall specifically bind the insurance carrier. This paragraph and all other provisions of this Agreement shall apply and be construed as applying to any subtenant of Concessionaire; in the event any such subtenant is allowed under the provisions of paragraph 13 of this agreement.

Notwithstanding other provisions contained in this Agreement, the City Manager is granted the right to immediately terminate the Agreement upon failure on the part of the

Concessionaire to keep in full force and effect during the entire term of the agreement, the insurance as set forth in this section.

3. Concessionaire shall, prior to opening for business each year of said Agreement, furnish a "Products and Price Schedule" and shall follow the products and price schedule as negotiated between the City Manager or his representative and Concessionaire.
4. Concessionaire shall provide all equipment and products to operate said concessions.
5. Concessionaire shall pay 13% of gross receipts after taxes to the City of Lodi, which payments shall be due on the tenth (10th) calendar day of every month for sales of the previous month. If said percentage has not been paid by the due dates, there shall be a penalty of five percent (5%) per day for any amounts not paid, and owing to the City. The Concessionaire shall keep accurate records and books of accounts of all purchases and sales, and does hereby give to the City or its authorized agents, the right to examine and audit said books at any time City desires. The Concessionaire shall complete monthly records on forms provided by the City, and these reports shall accompany gross receipts payments, provided to the City by the tenth (10th) calendar day of each month while concessions are in operation.
6. The dates and times of operation shall be as follows:

LODI LAKE OPERATIONS

- A. Concessionaire shall operate Fridays, Saturday, and Sundays from Memorial Day weekend through Labor Day weekend each year. Additional days of operation may be negotiable to realize optimum operating efficiencies and profitability while meeting the needs of park guests.
- B. The hours of operation of the Concession shall be from 11:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends, unless different hours are mutually agreed to in writing by City and Concessionaire.

## OTHER LOCATIONS FOR RECREATIONAL EVENTS/ACTIVITIES

Dates and times of operation to be mutually agreed upon by the concessionaire and Parks and Recreation Director on a quarterly basis.

7. Concessionaire agrees to obtain at his/her own expense, any and all permits and licenses which may be required by law or ordinance in conducting the concessions, and to pay any and all taxes and assessments which may be assessed against him or her for whatever purposes in the operation of said concessions.

8. Maintenance:

Concessionaire shall keep the food carts and the immediate surrounding areas in clean and presentable condition at all times and follow the strictest of sanitary conditions, and any State and local ordinances applicable to the business to be conducted. Concessionaire shall be responsible for daily removal from the premises all packaging materials (cartons, boxes, cases) in which food and beverage items are packed. Concessionaire shall be responsible to give the City written notice of any maintenance problems.

9. The rights granted hereunder for concession sales at the identified park and other locations for recreational events (determined quarterly by mutual agreement with concessionaire and Director of Parks and Recreation), shall be exclusive to Concessionaire, save and except any special events (e.g. boat races, Salmon Festival, Fourth of July events, major special events, etc.), conducted outside the normal course of operation at the above described locations, and of which the City Manager shall give concessionaire five (5) days advance notice.

Concessionaire will be given first consideration for vending at said special events upon agreement of event sponsor. (No food or product rights without agreement of sponsoring party.)

In the event concessionaire is chosen to provide concessions at any of the above listed special events, the fee to the City, and all accounting and other procedures shall be as provided in Paragraph 5 of this Agreement. However, if the sponsoring organization requires a vending fee from concessionaire, such vending fee shall be negotiated between event sponsor and City of Lodi, with such fee totaling a portion (not to exceed 100%) of the fee concessionaire is obligated to pay to the city.

10. Concessionaire is aware that a Possessory Interest Tax is or may be charged each year by the County Assessor for the use of the facilities and that payment of this tax is the responsibility of the vendor.
11. The Parks and Recreation Director reserves the right to approve or disapprove any employee or operator of said concession stand on a basis of such considerations as dress, general cleanliness, and working relationship with the public and staff, as needed to successfully vend food for day-to-day operations, tournaments or special events or activities. (The City will counsel and coordinate this action with Concessionaire manager). All concession employees will be dressed in like uniforms, white or other light color as approved by the Parks and Recreation Director, and be identified, by name, as employees of Concessionaire. All concession employees shall wear appropriate head attire to meet San Joaquin County Health Department requirements, and shall be clean at all times.
12. The City reserves the right to enter upon the premises at any reasonable time to inspect the operation and equipment thereon, or for any other purpose.
13. Concessionaire shall not have the right to sell, mortgage, assign or sublet the contract/agreement or any part thereof without the prior written consent of the City Manager or his representative. A breach of this condition shall automatically terminate any contract or agreement between City and Concessionaire. (In the event that Concessionaire is unable to provide required concession products and/or services for special events, the City shall have the right to secure said services and/or food and

beverage products, and to negotiate any and all agreements or contracts to provide said services and/or food and beverage products for sale to the public, and all proceeds therefrom shall be forfeited to the City. Said original Concessionaire shall have first right of refusal to participate in said negotiations.)

14. The agreement/contract may be terminated by written agreement of either party hereto without cause upon thirty (30) days' written notice to the other party. Such notice shall be delivered to the City Manager's office, City Hall, 221 West Pine Street, Lodi, or to the Concessionaire at a premise which is subject to this agreement.
15. Concessionaire shall be required to provide to the City upon the signing of this agreement a Fidelity Bond in the amount of \$1,000, or other security of equal value approved by the City Attorney.
16. If Concessionaire defaults in any of the terms contained herein, the Concessionaire's agreement to provide service as specified herein shall terminate upon failure of Concessionaire to correct the default within thirty (30) days of receiving written notice thereof from the City. Upon any termination thereof, Concessionaire agrees to quit and surrender possession peaceably and City shall have the right to remove Concessionaire and all others occupying through or under this agreement. Under such termination of agreement the Concessionaire's performance bond shall be forfeited to the City for payment of all outstanding debts owed by Concessionaire to the City, including monthly payment(s) and any and all reimbursements for repairs or replacement of the facilities.
17. In the event that either party brings an action under this Agreement for the breach or enforcement thereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs, whether or not such action is prosecuted to judgment.
18. At the City's discretion, according to the decision of the City Manager upon the recommendation of the Parks and Recreation Director, a two-year extension of this



agreement beyond the December 31, 2005, term may be considered, based upon the performance of concessionaire during the initial term of this agreement.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands the day and year first hereinabove written.

CONCESSION OPERATIONS

LODI LAKE PARK AND OTHER LOCATIONS FOR RECREATIONAL EVENTS

CITY OF LODI, a municipal  
corporation

CONCESSIONAIRE,

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H. Dixon Flynn  
City Manager

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Justin Burchard  
Java J'z, Inc.

ATTEST:

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Susan J. Blackston  
City Clerk

Dated: \_\_\_\_\_

Approved as to Form:

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D. Stephen Schwabauer  
Interim City Attorney

RESOLUTION NO. 2004-98

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING  
THE CONTRACT FOR CONCESSION OPERATIONS AT  
LODI LAKE PARK AND OTHER LOCATIONS FOR  
RECREATIONAL EVENTS

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WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council sealed bids were received and publicly opened on May 5, 2004, at 11:00 a.m. for concession operations at Lodi Lake Park and other locations (to be determined quarterly) for recreational events for the period of May 29, 2004 through December 31, 2005, described in the specifications therefore approved by the City Council on April 21, 2004; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

| <u>Bidder/Location</u>   | <u>Bids</u>  |
|--------------------------|--|
| Java J'z, Woodbridge, CA | Percentage to City -13% of Gross Sales (after sales tax) |

WHEREAS, the City Manager recommends award of the contract for Lodi Lake Park concession operations be made to the sole bidder, Java J'z of Woodbridge, California.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the award of the bid for the concession operations at Lodi Lake Park and other locations (to be determined quarterly) for recreational events for the period of May 29, 2004 through December 31, 2005, be and the same is hereby awarded to the sole bidder, Java J'z, of Woodbridge, California, for the percentage return to the City of 13% of gross sales (after sales tax).

Dated: May 19, 2004

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I hereby certify that Resolution No. 2004-98 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 19, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and  
Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk